



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
PAUL A. PFLUEGER, JR.)

Appearances:

For Appellant: Paul A. Pflueger, Jr., in pro. per.

For Respondent: Paul J. Petrozzi
Counsel

O P I N I O N

This appeal is made pursuant to section 18594 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Paul A. Pflueger, Jr., against a proposed assessment **of** additional personal income tax in the amount of \$199.80 for the year 1969.

The issue presented is the deductibility of eight \$250 semi-monthly payments to appellant's wife for her support and maintenance from April through July, 1969.

Appellant and his wife Dorothy separated on April 1, 1969. She sued appellant for divorce the same month in the Superior Court for Los Angeles County, and her complaint included a request for reasonable sums for

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support pending litigation. At the suggestion of **their** respective counsel, the parties orally agreed that appellant would pay his wife the aforementioned \$250 payments until terms of a written marital settlement agreement could be resolved. There was no court order for support pending the litigation, apparently as a consequence of the oral agreement.

On July 11, 1969, the parties entered into a written marital settlement agreement and, pursuant to the support provisions thereof, payments of \$900 per month began August 1, 1969. **This** latter agreement also provided that the wife would include in her taxable income all "support paid to her **by [her]** husband after March 31, **1969.**" An interlocutory decree dated July 20, 1970, and a final decree dated January 27, 1971, terminated the marriage.

Appellant claimed an alimony deduction of \$6,500 on his 1969 return. Respondent allowed \$4,500 thereof, i.e., the five \$900 monthly payments for August through December, but disallowed the \$2,000 paid prior to August 1, 1969.

Section 17263 of the Revenue and Taxation Code allows a husband to deduct support payments to his wife if those payments constitute gross income to the wife under section 17081. In general, support payments are taxable to her pursuant to that latter provision, if she is separated from her husband and the payments are received:

(a) Under a decree of divorce or separate maintenance or written instrument incident thereto, after such decree; **or**

(b) Under a written separation agreement after such agreement is executed: **or**

(c) Under a decree requiring the husband **to** make the payments for the wife's support or maintenance.

While not expressly emphasizing any specific subdivision of section 17081, appellant relies upon the oral agreement to make the \$250 payments. **He** seems to suggest that since the agreement was initiated by

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some written correspondence between the attorneys, the absence of a pre-existing written agreement **executed** by the spouses should not preclude deductibility. He apparently believes that just because court appearances were **thereby reduced** and a decree ordering temporary support was avoided, he should not be deprived of the deduction. He also refers to the language in the marital settlement agreement whereby the wife was to include in **her taxable** income support paid after March 31, 1969.

Since deductions may be allowed or withheld by the Legislature as it sees fit, they are to be narrowly construed against the taxpayer. (Great Western Financial Corp. v. Franchise Tax Board, 4 Cal. 3d 1 [92 Cal. Rptr. 489; 479 P.2d 993]; Appeal of Barry S. Bleeck, Cal. St. Bd. of Equal., Sept. 13, 1971.) Section 17263 simply does **not provide** for deduction of these payments because the amounts were not income to the wife under any subdivision of section 17081. First, the absence of a writing executed by the spouses providing for these \$250 payments precludes the operation of subdivision (b) of section 17081. (See Appeal of Barry S. Bleeck, supra; LeRoy Keebler, T.C. Memo., Sept. 29, 1969.) Furthermore, the spouses did not make this subdivision applicable by providing in their later written agreement that the wife was to include in her taxable income support paid after March 31, 1969. The \$250 payments were still paid under the oral agreement and not under such later agreement.

Second, subdivision (c) of section 17081 is of no greater help to appellant. There simply was no court decree requiring these temporary payments even if one might have been obtained in absence of the oral agreement. (See LeRoy Keebler, supra.)

It is also obvious that subdivision (a) of section 17081 has no possible application.

For the above reasons, we must sustain respondent's **action** in denying \$2,000 of the deduction.

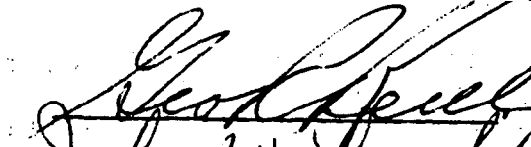
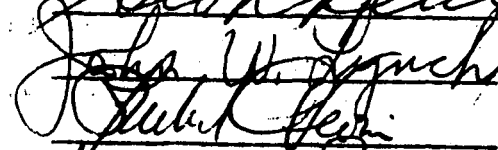
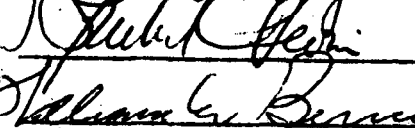
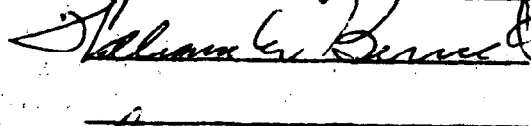
O R D E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

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IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of Paul A. Pflueger, Jr., against a proposed, assessment of additional personal income tax in the amount of \$199.80 for the year 1969, be and the same is hereby sustained.

Done at Sacramento, California, this 26th day of March, 1974, by the State Board of Equalization.

 Chairman
 Member
 Member
 Member
_____, Member

ATTEST: , Secretary